



STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Draft

Date Amended:	03/20/02	Bill No:	AB 1916
Tax:	Sales and Use	Author:	Matthews, et al.
Board Position:		Related Bills:	AB 2587 (1999-00)

BILL SUMMARY

This bill would codify provisions of the Board's regulation relating to the exemption for sales and purchases of lancets and blood glucose test strips, and would specify that the exemption for sales and purchases of these items would apply whether or not these items are furnished by registered pharmacist.

ANALYSIS

Current Law

Under existing law, except where specifically exempted by statute, sales or use tax is imposed on all retailers for the privilege of selling tangible personal property at retail in this state. Section 6369 of the Sales and Use Tax Law provides that sales of medicine, when prescribed and sold or furnished under certain conditions for the treatment of a human being, are exempt from sales and use tax. Although an item, device, or apparatus may be prescribed by a physician for the treatment of a patient, for the sale to be exempt from tax, the item must qualify as a "medicine" under Section 6369.

Under this section, certain named devices, instruments, apparatus, devices, and physical equipment, are included within the term "medicine" and therefore qualify for the exemption from tax. For example, the sale or use of insulin and insulin syringes furnished by a registered pharmacist for treatment of diabetes are specifically included within the term "medicine" and therefore currently qualify for an exemption from tax.

The Board's Regulation 1591.1, *Specific Medical Devices, Appliances, and Related Supplies*, interprets and makes specific the provisions of Section 6369. Under the regulation, sales and purchases of glucose test strips and skin puncture lancets *furnished by a registered pharmacist* that are used by a diabetic patient to determine his or her own blood sugar level and the necessity for and amount of insulin and/or other diabetic control medication needed to treat the disease in accordance with a physician's instructions are considered an integral and necessary active part of the use of insulin and insulin syringes and, accordingly, are not subject to sales or use tax. Sales and purchases of these items over-the-counter without being furnished by a registered pharmacist, however, remain subject to tax.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position

Proposed Law

This bill would amend Section 6369 of the Sales and Use Tax Law to include within the term “medicines,” lancets and blood glucose strips for persons for treatment of diabetes as directed by a physician whether or not the items are furnished by a registered pharmacist.

The provisions of the bill would become operative on the first day of the first calendar quarter commencing more than 90 days after the bill becomes enacted.

Background

A similar measure was considered in the 2001 Legislative Session. That measure, AB 249 (Matthews), which, in addition to containing similar provisions to this bill, would have also provided a partial tax exemption for herbs and various substances used by an acupuncturist, but was vetoed by the Governor. In this veto message, Governor Davis stated, “...Notwithstanding the merits of this measure, given the rapid decline of our economy and a budget shortfall of \$1.1 billion through the first three months of this fiscal year alone, I have no choice but to oppose additional General Fund revenue losses.”

COMMENTS

1. **Sponsor and purpose.** Assembly Member Matthews is sponsoring this measure in an effort to, in part, codify the Board’s regulation, and to additionally amend the law to eliminate the requirement that these testing devices be furnished by a registered pharmacist. According to the author’s office, lancets and glucose test strips may be purchased without the assistance of a registered pharmacist. Therefore, the requirement that they be furnished by a registered pharmacist in order for the exemption to apply should be eliminated from the law.
2. **Bill would ease administration and simplify record keeping for retailers.** As with all exemptions, the more conditions that apply, the more difficult the administration of that exemption becomes. Under current law, if a consumer purchased the items through the pharmacist’s register, the exemption would apply. If they were purchased through a separate cashier, the exemption would technically not apply. From a practical standpoint, having an exemption hinge on what cash register the items are rung through seems illogical. This bill would eliminate that condition, and would simplify both the Board’s administration of the exemption as well as retailers’ compliance.

COST ESTIMATE

Some administrative costs would be incurred in notifying retailers, revising the Board’s applicable regulation and responding to inquiries. These costs are expected to be absorbable.

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REVENUE ESTIMATE

While this bill would make a change in the law that would appear to expand the exemption, from a practical standpoint, the state's revenues would not be materially affected. Enactment of this measure would enable diabetics to simply purchase the blood testing devices over-the-counter, rather than through the pharmacist, and retain the sales and use tax exemption. Therefore, deleting the requirement that a registered pharmacist furnish these items in order for the exemption to apply would not materially affect state or local revenues.

Analysis prepared by:	Sheila T. Sarem	445-6579	03/26/02
Contact:	Margaret S. Shedd	322-2376	
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